A **NOOR AZMAN SAHAR & ORS**

v.

DATUK BANDAR KUALA LUMPUR

B HIGH COURT MALAYA, KUALA LUMPUR
AZIAH ALI J
[APPLICATION FOR JUDICIAL REVIEW NO: R1-25-242-08]
16 JULY 2010

C ***ADMINISTRATIVE LAW:*** *Exercise of administrative powers - Local authority - Notices issued on applicants to vacate and clear land of any building and structure - Whether local authority had power to issue such notices - Whether local authority had been conferred control over land - Whether applicants' contention had merit*

D ***LOCAL GOVERNMENT:*** *Buildings - Demolition - Local Government Act 1976, s. 108(2), (3) - Whether notices to vacate and clear land duly served on applicants - Whether applicants had to be identified by name - Whether buildings and structures on land were squatter huts under Essential (Clearance of Squatters) Regulation 1969 - Whether local authority had power to issue notices to applicants to vacate and clear land of all buildings and structures - Whether intended use of land had bearing on validity of notices - Whether applicants entitled to compensation for demolition of buildings and structures on land*

F The respondent, the Mayor of Kuala Lumpur, issued notices ('said notices') to the applicants to vacate the land they were occupying and clear it of any building or structure. The applicants brought this action to prohibit the respondent from demolishing their houses and to claim for compensation should the demolition take G place. They submitted *inter alia* the following: (i) the said notices were not duly served by virtue of s. 108(2) Local Government Act 1976 ('the Act') as the applicants were not identified by name; (ii) the said notices did not comply with a Government Gazette; and (iii) the respondent did not have the power to issue H the said notices as he was not the owner of the land.

Held (dismissing the application):

(1) The notices issued by the respondent were intended I specifically for the 'occupier' and not 'any person' as evident from the reading of the said notices. Therefore, s. 108(3) of

the Act would be applicable and the provision did not require the respondent to name the applicants in the said notices. The mode of service was thus proper and in accordance with the Act. (para 9)

(2) The applicants' contention was that the said notices were *ultra vires* the Gazette which stipulated that the land was for 'a public purpose'. They submitted that the respondent did not provide proof that the land was for such use. However, it was decided that the intended use of the land did not have a bearing on the validity of the said notices. (para 11)

(3) The respondent had been conferred with control over the land by the Land Executive Committee, Federal Territory of Kuala Lumpur and was responsible for the administration of the municipal affairs of the City of Kuala Lumpur under the Federal Capital Act 1960 and the City of Kuala Lumpur Act 1971. Therefore, there was no merit in the applicants' submission that the respondent had no power to issue the said notices. (para 12)

(4) The applicants had failed to show proof that the buildings and structures were not 'squatter huts' under the Essential (Clearance of Squatters) Regulations 1969 and as such could not claim compensation for the demolition of their houses. (para 14)

(5) The applicants' prayer for an order to prohibit the respondents from demolishing or removing the structures would tantamount to prohibiting the respondent from fulfilling his public duties. There was no justifiable reason in this case to grant such an order. (paras 15 & 16)

Case(s) referred to:

Datuk Bandar Kuala Lumpur v. Abdul Aziz Mohamed Ginan & Ors [2007] 3 CLJ 399 CA ***(refd)***

Datuk Bandar Majlis Bandaraya Shah Alam & Anor v. Yusuf Awang & Ors [2007] 4 CLJ 253 CA ***(refd)***

Samuhum Karapanan v. Ketua Polis Daerah Melaka Tengah & Ors [2005] 1 LNS 256 HC ***(refd)***

Sidek Hj Muhamad & Ors v. The Government of the State of Perak & Ors [1982] CLJ 244; [1982] CLJ (Rep) 321 FC ***(refd)***

Yusuf Awang & Ors v. Datuk Bandar Majlis Bandaraya Shah Alam & Anor [2007] 6 CLJ 677 FC ***(refd)***

Legislation referred to:
Essential (Clearance of Squatters) Regulation 1969, reg. 10
Local Government Act 1976, s. 108(2), (3)
Public Authorities Protection Act 1948, s. 2

For the applicants - Azwan Abdul Wahab; M/s Dzahara & Assocs
For the respondent - Asmadi Othman; M/s Che Mokhtar & Ling

Reported by Melinda Robert

JUDGMENT

Aziah Ali J:

[1] The applicants (as listed in Lampiran 'A' to the application encl. 1) have been occupying the land Lot No. 50968, Daerah Wilayah Persekutuan, Mukim Batu known as Kampung Medan Wira Utama, Jalan Empat Tin, Batu 4 1/2 Off Jalan Ipoh, Kuala Lumpur ("the land") for approximately ten years. The land belongs to the government. The respondent, the Mayor of Kuala Lumpur, issued 'Notis Untuk Meruntuhkan Pondok Setinggan' dated 4 April 2008 ("the notices") under the Essential (Clearance of Squatters) Regulations 1969 ("the regulations") to the applicants which the applicants say were received on 7 August 2008. The notices gave the applicants 14 days' notice to vacate the land and to demolish buildings and structures built on the land failing which the respondent will demolish the buildings with costs to be borne by the applicants. The said notices that were served on the applicants read as follows:

Notis Peraturan-peraturan Perlu (Pembersihan Setinggan-Setinggan) 1969

Notis Meruntuhkan Pondok Setinggan

Kepada:	No. Siri:
Nama:	Fail No:
No. Kip:	No. Kajian:
Alamat: Kg Medan Wira Utama,	Tarikh: 4 OGOS 2008
Batu Muda, Kuala Lumpur	

Tuan/Puan

Pembersihan Setinggan: Di Kg Medan Wira Utama, Batu Muda, Kuala Lumpur.

Projek pembangunan: Program Pembersihan Setinggan Wilayah Persekutuan Kuala Lumpur

Adalah dengan ini dimaklumkan bahawa kerajaan akan melaksanakan projek pembangunan di kawasan tersebut di atas, dan didapati bangunan yang tuan/puan duduki/gunakan sekarang adalah terlibat secara langsung dengan pelaksanaan projek tersebut.
2. Maka dengan hal yang demikian atas kuasa-kuasa yang diberikan kepada saya di bawah Peraturan-peraturan Perlu (Pembersihan Setinggan-setinggan) 1969 yang meliputi kawasan Wilayah Persekutuan Kuala Lumpur, dengan ini memberi tuan/puan tempoh 14 (Empat Belas) hari dari tarikh penerimaan notis ini supaya berpindah dan mengosongkan serta merobohkan bangunan dan apa-apa sambungan atau binaan di atas tanah yang tuan/puan duduki/gunakan sekarang.

3. Sila Ambil Perhatian bahawa jika tuan/puan gagal mengosongkan tapak tersebut dalam masa yang ditetapkan, jabatan ini akan mengambil tindakan merobohkan bangunan tersebut dan menuntut semua kos kerja daripada tuan/puan.

Sekian.

'Berkhidmat Untuk Negara'
'Bersedia Menyumbang, Bandar Raya Cemerlang'

Saya yang menurut perintah

Sgd
(Minhad bin Ahmad)
Penguasa
Jabatan Keselamatan Dan Penguatkuasaan
Dewan Bandaraya Kuala Lumpur
b.p. Datuk Bandar Kuala Lumpur

Tarikh Notis: 7/8/08	Tarikh Notis Tamat: 21/8/08
Penerima:	No. Kad Pengenalan:
Cara Penyampaian: Tampal	Disampaikan oleh:
	Nama
	Tandatangan:

[2] The applicants aver that their application for lots on the land were rejected by the Lands and Mines Department, Wilayah Persekutuan *vide* letter dated 6 October 1998 for the reason that the said land has been reserved for a public purpose to wit for sewage treatment plant. The Land Executive Committee, Federal Territory of Kuala Lumpur has designated that the Mayor of Kuala Lumpur shall have control of the reserved land (Gazette Notification PU(B)139, exh. NAS7).

[3] Despite acknowledging that the land belongs to the government, the applicants aver that they are not squatters but licensees and have a right to remain on the land. Otherwise the applicants state that they ought to be paid compensation if their houses are demolished.

[4] The applicants challenged the validity of the notices issued on the following grounds:

(a) only photostat copies and not original copies of the notices were pasted on their houses;

(b) the respondent has no right to issue the notices as the respondent is not the owner of the land;

(c) the notices do not state the reason for demolishing their houses;

(d) the land is not a squatter area as all amenities are provided;

(e) the notices do not comply with the Government Gazette dated 6 February 1996.

[5] By way of this application the applicants seek for *inter alia* the following reliefs:

(a) Satu pengistiharan/deklarasi bahawa notis untuk meruntuhkan pondok setinggan bertarikh 4 April 2008 yang dikeluarkan oleh pihak responden adalah tidak sah, batal dan tidak berkesan dan/atau menyalahi undang-undang; dan

(b) Suatu perintah *certiorari* untuk membatalkan notis-notis meruntuhkan pondok setinggan bertarikh 4 Ogos 2008 yang dikeluarkan oleh responden yang mengarahkan pemohon-pemohon supaya berpindah dan mengosongkan kediaman mereka di Kampung Medan Wira Utama, Batu Muda, Kuala Lumpur;

(c) Suatu perintah melarang responden daripada mengambil tindakan meroboh atau mengalih struktur-struktur yang dimiliki oleh pemohon-pemohon atau merampas kenderaan dan benda-benda lain kepunyaan pemohon-pemohon di atas tanah tersebut yang didiami oleh pemohon-pemohon;

(d) Suatu perintah bahawa pemohon-pemohon berhak kepada bayaran pampasan gantirugi yang akan ditaksirkan sekiranya responden bertindak meruntuhkan kediaman mereka;

(e) Bahawa sementara menunggu perbicaraan dan pelupusan permohonan substantive bagi relif-relif yang disebut di atas, semua tindakan perlaksanaan atau lain berdasarkan notis bertarikh 4 Ogos 2008 ditangguhkan dan pemohon-pemohon tidak dikehendaki berpindah atau mengosongkan kediaman mereka di atas hartanah tersebut.

[6] The respondent says that the applicants have occupied the land illegally. In other words the applicants are squatters. The buildings and structures erected on the land were put up illegally and the applicants have not paid any quit rent or assessment to the government or the local authority. The applicants have failed to comply with the notices given. The respondent has also offered alternative housing to the applicants. During the hearing, counsel for the respondent informed the court that some of the applicants herein have accepted the offer. These have not been denied. I dismissed the application and awarded costs under s. 2 of the Public Authorities Protection Act 1948.

[7] Issues similar to the issues raised in the present application have been raised and adjudicated by the Court of Appeal and the Federal Court. In the present case, the applicants alleged amongst others that the original copies of the notices were not affixed on their premises and they have never received the notices from the landowner and the service of the notices are contrary to the provisions of s. 108 of the Local Government Act 1976 ("the Act"). It is contended by counsel for the applicants that the notices ought to have been served under sub-s. 108(2) since the identities of the owner or occupier are known to the respondent. Counsel submits that sub-s. 108(2) does not provide for service by way of affixing the notices. It is submitted that service by way of affixing is only allowed under sub-s. 108(3) where the identities of the owner or occupier are unknown to the respondent.

[8] Section 108 of the Act provides as follows:

108. Notices, etc.

(1) Notice, orders, warrants, licences, receipts and other similar documents may be in print or partly in writing and partly in print.

(2) Service of a document on any person shall be effected:

(a) by delivering the same to such person or by delivering the same at the last known place of residence of such person to an adult member of his family;

A (b) by leaving the same at the usual or last known place of residence or business of such person in a cover addressed to such person; or

(c) by forwarding the same by post in a prepaid letter addressed to such person at his usual or last known
B place of residence or business.

(3) A document required to be served on the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of such premises without further name or description and
C may be served by delivering the same to some adult person on the premises or, if there is no such person on the premises to whom the same can with reasonable diligence be delivered, by fixing the same on some conspicuous part of the premises.

D

[9] Subsection 108(2) refers to service on "any person". Subsection 108(3) refers to service on "owner" or "occupier". Therefore where service of a notice is to be effected on "any person" then service is to be effected as prescribed under
E sub-s. 108(2). Where a notice is intended to be served specifically on an owner or occupier, then service is to be effected under sub-s. 108(3). The notices issued by the respondent are specifically intended for the 'penduduk' or occupier as evident from the words 'bangunan dan apa-apa sambungan atau binaan di
F atas tanah yang tuan/puan duduki/gunakan sekarang. Therefore sub-s. 108(3) is applicable. Subsection 108(3) does not require the name of the owner or occupier to be stated. Therefore I find that the notices issued and the mode of service proper and are in accordance with the Act.

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[10] In the Court of Appeal case of *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v. Yusuf Awang & Ors* [2007] 4 CLJ 253, the appellants served notices to the respondents under reg. 10 of the same regulations. Similarly as in the present case,
H these notices essentially informed the respondents that they have constructed or are occupying squatter huts on the said property and hence have committed an offence under the said regulations. As such they were required within seven days from the date of the notices to remove any person or moveable property and
I demolish their respective squatter huts. The Court of Appeal found that some of the notices were served on some of the respondents or on some "adult person on the premises" and some were purportedly affixed on "some conspicuous part of the

premises". In any event none of the respondents or the "adult person on the premises" acknowledged receipt of the said notices. The Court of Appeal held that the notices served were in compliance with the provisions of s. 108 of the Local Government Act, *viz*, by delivering the same to such person or delivering the same at the last known place of residence of such person to an adult member of his family or leaving the same at the usual or last known place of residence or by fixing the notices on some conspicuous part of the premises. Further even if the notices were undated, the court held that it cannot nullify the said notices.

[11] It is contended for the applicants that the notices are *ultra vires* the gazette dated 6 February 1996 on the ground that in the gazette it is stated that the land has been reserved for 'a public purpose, to wit, a site for sewage treatment plant'. Counsel refers to para. 16 of the respondent's affidavit wherein it is averred that 'tanah tersebut termasuk dalam projek tertentu oleh kerajaan seperti kumbahan najis awam dan projek landasan berkembar elektrik ...'. It is submitted that the respondent has not produced evidence that the said land is to be used for sewage treatment plant. A perusal of the Gazette shows that the land is reserved for 'a public purpose'. The intended use of the land for 'kumbahan najis awam dan projek landasan berkembar elektrik' as averred by the Respondent is obviously for a public purpose. In any event I am of the opinion that what the land is to be used for by the government has no bearing on the issue of validity of the notices.

[12] Counsel for the applicants further submits that the respondent has no power to issue the notices. I am unable to agree with counsel's submissions. *Vide* the Gazette the Land Executive Committee, Federal Territory of Kuala Lumpur has designated that the respondent shall have control of the land. Further the respondent is the authority responsible for the administration of the municipal affairs of the City of Kuala Lumpur under the Federal Capital Act 1960 (Act 190), an Act to provide for the local government of the City of Kuala Lumpur and to be read together with the City of Kuala Lumpur Act 1971 (Act 59). Having been conferred with control over the land and being the local authority the respondent is therefore empowered to take action under the regulations. In the case of *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v. Yusuf Awang & Ors (supra)* the Court of Appeal said:

> Regulation 10 of the said regulations clearly provides that a local authority may enter on any private land for the purpose of demolishing any squatter hut ..... The 2nd appellant is clearly a public authority and it exercises public functions as local authority. The meaning assigned to the expression "public authority" in the Federal Constitution also includes a local authority (see art. 160(2)).

Therefore the submission that the respondent has no power to issue the notices is without merit.

[13] The applicants also contend that amenities have been provided to the land and that they have improved the land. In the Court of Appeal case of *Datuk Bandar Kuala Lumpur v. Abdul Aziz Mohamed Ginan & Ors* [2007] 3 CLJ 399 the plaintiffs were occupiers of Kampung Semarak, Kuala Lumpur and Kampung Loke Yew, Kuala Lumpur. The plaintiffs filed a suit against the Datuk Bandar Kuala Lumpur and contended amongst others that the notices served by the defendant pursuant to the Essential (Clearance of Squatters) Regulations 1969 ("the Regulations") to evict them from their homes are invalid. The plaintiffs also contended that they are equitable licencees on the said land by virtue of the encouragement by the Government in allowing them to stay therein over a period of time and in consequence of which they had incurred expenditure on the structures erected on the said land. The plaintiffs further contended that the defendant had given recognition as to the existence of Kampung Semarak and from the fact that the road signboards put up by the defendant in the locality referred it as 'Kampung Semarak'. Further it is contended that various facilities have been provided for Kampung Semarak which includes workshop, kindergarten, community centre, roads, 'surau', water, electricity and telephone. The Court of Appeal ruled against the plaintiffs. In his judgment Zulkefli Ahmad Makinudin JCA (as His Lordship then was) also said as follows:

> Firstly, it is to be noted that the plaintiffs are not claiming any interest on the said land. The ultimate relief sought by the plaintiffs as shown in their amended statement of claim are merely for damages to satisfy their alleged equity on the land. If that is the case then it would be a reasonable inference to state that the plaintiffs are only interested in compensation .... We are of the view looking at the final reliefs sought for by the plaintiffs which is plainly in terms of monetary value, such damages and

compensation, if any, to be awarded to the plaintiffs are definitively measurable and capable of being valued .... The defendant in this case is a public authority performing duties to the public and on this premise we would venture to state that the balance of convenience would have to lean in favour of the defendant in not granting the injunction sought for by the plaintiffs ... Thirdly, the plaintiffs are provided with alternative accommodation by the defendant for moving out of the said land ... It is to be noted here that a majority of those who have stayed previously on the same said land where the plaintiffs are staying have already moved out wherein they have responded to the relocation plan to stay at "Projek Perumahan DBKL Sri Semarak" as arranged by the defendant.

[14] Similarly in the present case *vide* prayer (d) what the applicants are interested in is compensation if their houses are demolished by the respondent. However the applicants have not shown proof that the buildings and structures on the land have been built with the necessary approval. In my opinion the provision of amenities and facilities do not in any way alter the fact that the buildings and structures on the land had been built without the necessary approval from the local authority and are therefore 'squatter hut' under the regulations. Therefore the buildings and structures on the land are 'squatter huts'. Mohd Ghazali Yusoff JCA (as His Lordship then was) said in *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v. Yusuf Awang & Ors (supra)* that the issue is not whether the applicants are squatters but whether the buildings and structures built on the land fall within the definition of 'squatter hut' under the Regulations. His Lordship said:

Another point canvassed by the respondents was that the appellants failed to establish that the respondents are squatters. We would think that the issue in the instant appeal is whether the buildings erected and owned by the respondents are "squatter huts". The definition of "squatter hut" in reg. 3 of the said regulations is very clear.

... the respondents must prove that their respective buildings were erected with plans approved by the local authority, ie, the second appellant. They have not even shown that they are in lawful occupation of the said property. It is an undisputed fact that the registered owner of the said property is Hock Hup Developments Sdn Bhd (now known as Ken Rimba Jaya Sdn Bhd) and not the respondents. Being squatters, having not shown otherwise, they have no right in law or equity.

A On appeal to the Federal Court (*Yusuf Awang & Ors v. Datuk Bandar Majlis Bandaraya Shah Alam & Anor* [2007] 6 CLJ 677), the Federal Court said:

> Having regard to the facts and circumstances of this case we have
B no difficulty in concluding that the buildings erected on the said property come within the meaning of "squatter hut" as defined under reg. 2 because the appellants were unable to show that the said building were erected in accordance with a plan approved by the local authority or had been issued with a licence. The contention that they had been in occupation of the land without
C any interruption by the landowner would not help to change the status of the buildings being squatter huts in lieu of the necessary approval. To that extent even if the buildings were constructed with the consent of the land owner, so long as they were not in accordance with the plan approved by the local authority they
D would still come within the meaning of "squatter hut" under reg. 10.

As the buildings and structures are squatter huts, in my opinion the issue of compensation does not arise. Further the applicants have not denied that applicant No. 3, 8, 9, 13, 17, 18, 20, 24,
E 26, 29, 35, 41, 42, 45, 46, 50, 56 have been offered housing at PPR Batu Muda (exh. R1).

[15] The applicants have also prayed for an order to prohibit the respondent from demolishing or removing the structures belonging
F to the applicants or from seizing the vehicles and other articles belonging to the applicants on the land occupied by the applicants. The effect of this prayer is akin to injuncting the respondent from performing his public duties. I am guided by the judgment of the Court of Appeal in *Datuk Bandar Majlis Bandaraya*
G *Shah Alam & Anor v. Yusuf Awang & Ors (supra)* wherein the court said:

> The effect of the perpetual injunction granted in this instant appeal would be tantamount to the respondents having established their right that they can continue to occupy the squatter huts erected
H on the said property and that the appellants cannot take any fresh action or act further under reg. 10 of the said regulations against the respondents. The perpetual injunction would also be tantamount to vesting of a right to remain on the said property and indirectly the vesting of a right to occupy land by
I prescription, *viz*, the vesting of a right by reason of lapse of

time. In other words, a title by prescription, which is of course foreign to our land law. Our Code clearly does not all provide for right to remain on land or right to occupy land by prescription.

[16] Having considered the judgments of the Court of Appeal above I find no justifiable reason why an order which has the effect of prohibiting the respondent from performing his public duties as prayed for ought to be granted.

[17] Finally with regard to squatters resorting to the court to resist an order of possession illegally acquired, in *Datuk Bandar Majlis Bandaraya Shah Alam & Anor v. Yusuf Awang & Ors (supra)* Mohd Ghazali Yusof JCA referred to the case of *Sidek Hj Muhamad & Ors v. The Government of the State of Perak* & Ors [1982] CLJ 244; [1982] CLJ (Rep) 321 as follows:

In *Sidek bin Haji Muhammad & 461 Ors v. The Government of the State of Perak & Ors* [1982] CLJ 244; [1982] CLJ (Rep) 321, Raja Azlan Shah CJ (Malaya) (as His Majesty then was) said:

> It is well established that a court of equity will never assist squatters to resist an order of possession illegally acquired; it will never intervene in aid of wrong-doers. (See *Grafton v. Griffin*). We would like to say this at once about squatters. The owner is not obliged to go to the courts to obtain an order of possession. He is entitled if he so wishes, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the courts of law. He can even use force, so long as he uses no more force than is reasonably necessary. He will not then be liable either criminally or civilly. This however is not to be encouraged because of the disturbance which might follow but the legality of it is beyond question.

For the reasons stated above, I find that the applicants have failed to justify why this court ought to grant the reliefs prayed for. I therefore dismissed the application.

[18] On the issue of costs, I refer to s. 2 of the Public Authorities Protection Act 1948 which provides as follows:

2. Protection of persons acting in execution of statutory or other

Where, after the coming into force of this Act, any suit, action, prosecution or other proceeding is commenced in the Federation against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or

A authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the following provisions shall have effect:

(a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof;

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(b) whenever in any such suit or action a judgment is obtained by the defendant, it shall carry costs to be taxed as between solicitor and client;

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(c) where the proceeding is a suit or action for damages, tender of amends before the suit or action was commenced may be pleaded *in lieu* of or in addition to any other plea;

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(d) if the suit or action is commenced after the tender or offer in writing, or is proceeded with after payment into court of any money in satisfaction of the plaintiffs claim, and the plaintiff does not recover more than the sum tendered, offered or paid, he shall not recover any costs incurred after the tender, offer or payment, and the defendant shall be entitled to costs to be taxed as between solicitor and client as from the time of the tender, offer or payment, and the costs up to the time of such tender, offer or payment shall be in the discretion of the court:

E

F Provided that this provision shall not affect costs on any injunction in the suit or action.

In *Samuhum Karapanan v. Ketua Polis Daerah Melaka Tengah & Ors* [2005] 1 LNS 256 the plaintiff filed an action for a declaration that the decision of the first defendant in terminating the service of the plaintiff as a member of the Royal Malaysian Police is wrongful, null and void, being in contravention of the rules of natural justice and for an order that the plaintiff be reinstated to the service without any reduction of salary or seniority, with effect from 12 January 2000. In his judgment Low Hop Bing J (as His Lordship then was) said:

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> As the plaintiff's originating summons was commenced against, *inter alia*, D1 for D1's act done in pursuance or execution of the Regulations or of his public duty or authority as the adjudicating officer, and judgment has been obtained, *inter alia*, by D1, the clear provisions of s. 2(b) *viz* the words "shall carry costs to be taxed as between solicitor and client" make it mandatory for the award of costs on a solicitor-client basis which I hereby order.

I

Similarly in this case the applicants commenced this action against the respondent for acts done by the respondent in pursuance or execution of the respondent's public duty or authority and the application has been dismissed. Therefore in my opinion it is appropriate to award costs under s. 2 referred to above and I so ordered.